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FOIP FOLIO

SASKATCHEWAN

October 2006

NEW FOIP CO-ORDINATORS

We welcome the new Head of the Access to Information and Privacy Unit for the University of Regina. **Annette Revet** who is a University of Regina graduate with a Master's degree in Business Administration and B.Sc. (Hons) in Chemistry. She is currently the University of Regina Enterprise Risk Manager. She will now also assume responsibility for *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). Her contact information is: Phone: (306) 337-3127; Email: Annette.Revet@uregina.ca.

Welcome also to **Cheryl Senecal** who recently assumed the FOIP Co-ordinator role as the Acting Director of Finance and Administration in Saskatchewan Labour. She has held various positions in the Department of Labour over the past several years, including responsibility for Education and Training Services, and Special Projects in the Deputy Minister's Office. Her contact information is: Phone: (306) 787-2415; Email: **csenecal@lab.gov.sk.ca**

REFLECTIONS ON RIGHT TO KNOW WEEK (RTK)

We should acknowledge excellent work done by the Saskatchewan Right to Know Committee in organizing our inaugural RTK Week in this province. The Minister of Justice and Mayors of Saskatoon and Regina officially proclaimed Sept. 25 to 29, 2006 as RTK Week in the province and in those cities.

Thanks to the Committee spokesperson, **Ian Peach** (Saskatchewan Institute of Public Policy) and other steering committee members, **Jeff Barber**, (Regina Public Library), **David MacLean** (Canadian Taxpayer Federation), and **Mark Anderson**. Thanks to those who participated in panel discussions at the Regina Public Library on Monday, Sept. 25 and at the College of Law in Saskatoon on Tuesday, Sept. 26. Panelists included **David MacLean, Neil Robertson**, (Regina City Solicitor), **Greg Marchildon**, (former Deputy Minister of Executive Council), and **Dan Zakreski** (CBC Television). **Ian Peach** moderated the panel on Monday and his colleague, **Rose Olfert** (Associate Director, SIPP) moderated the Saskatoon panel on Tuesday. **His Honour the Lieutenant Governor of Saskatchewan Dr. Barnhart** brought greetings at the presentation evening on Wednesday, Sept. 27. Congratulations to the City of Regina for being the recipient of the inaugural Chief Justice E.M. Culliton Right to Know Award. And many thanks to **Kenneth Hodges**, Q.C., who presented the award on behalf of the Culliton family.

REFLECTIONS ON RIGHT TO KNOW WEEK (RTK) – CONT'D

The keynote speaker, **David Gollob, Vice-President of the Canadian Newspaper Association,** spoke of the importance of freedom of information and how this impacts all Canadians. Finally, RTK Week saw the launch of the essay contests for high school and post-secondary students. Representatives of the RTK Steering Committee participated in three radio interviews, four articles in daily newspapers, and an interview in the PlanetS magazine. The work of the RTK Committee was supported by OIPC Portfolio Officers, **Sandra Barreth**, **Diane Aldridge** and **Larissa McWhinney**.

Similar events were occurring in almost all provinces, the Yukon and at the federal level in Ottawa. The Canadian events are described at www.righttoknow.ca.

MAKING THE GRADE

Back in the May 2005 FOIP FOLIO, we reported the results of the Canadian Newspaper Association's audit. The audit involved 89 reporters from 45 newspapers across Canada testing whether municipal governments and agencies made the grade when responding to access to information requests. The testing ran from February to April of 2005. At that time, Saskatchewan did not fare well with an abysmal 44%, an F grade.

In its second go-round[1], more than three dozen newspapers participated in testing agency responses to applicants' information requests in every province and at the federal level. The information sought was consistent in each jurisdiction and included:

- the quantity of and amount spent on herbicides and pesticides by municipalities;
- crime data;
- reports of merit pay or bonuses paid to hospital or health region personnel; and
- information from the Public Health Agency of Canada on drug stockpiles to fight pandemics.[2]

How did Saskatchewan rate this time? British Columbia, Newfoundland and Labrador, and Prince Edward Island released all requested information in full resulting in a mark of 100%. Nova Scotia scored 89% with Saskatchewan close behind with 83%. Ontario and Alberta scored 69% and 67% respectively. New Brunswick scored near the bottom with 33%.

This is not a scientific survey but we think Saskatchewan's improved rating may reflect the substantial efforts by regional health authorities and municipalities to comply with both the letter and the spirit of the access to information legislation in this province.

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[1] 2006 Freedom of Information Audit. Canadian Newspaper Association. Available online at: http://www.cnaacj.ca/Client/CNA/cna.nsf/object/FOIAudit2006/$file/2006%20CNA%20Freedom%20of%20Information%20Audit.pdf

[2] Ibid, page 4

APPEARANCES MAY BE DECEIVING

In a recent article[3], Ontario Information and Privacy Commissioner **Ann Cavoukian** raised concerns about risks to personal privacy for individuals when online. The article quotes her as stating that "*[t]he Internet was built without a way to know who and what individuals are connecting to. As a result, people are subject to new crimes like 'phishing,' in which people are fooled into sending key information to what they thinks is a trustworthy business, but is actually an identity theft criminal.*"

In order to address these concerns, she recently released a paper *Seven Laws of Identity: The Case for Privacy-Embedded Laws of Identity in the Digital Age* available on the Ontario OIPC website: http://www.ipc.on.ca/docs/7laws-whitepaper.pdf. The proposed principles would "*essentially remove user names and passwords from the Internet and instead equip users with a virtual wallet of banking and identification cards that* [the Commissioner] *says will give people more power over what personal information goes where.*"[4] Building in an identity management layer to the Internet would increase consumers' comfort levels in knowing with whom they are dealing.

For other resources on identification and authentication, visit the Privacy Commissioner of Canada's website at http://www.privcom.gc.ca/information/guide/auth_061013_e.asp. Referenced in the article found at this link is another resource titled, *Principles for Electronic Authentication: A Canadian Framework* developed by a multi-stakeholder group with leadership from Industry Canada available at: http://ecom.ic.gc.ca/epic/internet/inecic-ceac.nsf/en/h_gv00240e.html. Also available from Ontario's Access and Privacy Office, Ministry of Government Services is a discussion paper titled *Identity Authentication and Authorization in Electronic Service Delivery – An Ontario Perspective* available online: http://www.accessandprivacy.gov.on.ca/english/pub/iaa.html.

NEW REGULATIONS UNDER LA FOIP ACT

The Lieutenant Governor in Council has just repealed section 8.1 of the LA FOIP Regulations and replaced it with the following:

> *Confidentiality provisions in other enactments*
> *8.1 For the purposes of clause 22(3)(a.1) of the Act, the following are prescribed as provisions to which subsection 22(1) of the Act does not apply:*

[3] Ont. Privacy czar pushing for better ID protection. CTV News. October 19, 2006. Available online: http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20061018/identity_protection_061018/20061018?hub=TopStories

[4] Ann Cavoukian Online Q&A. The Globe and Mail (Canada). October 19, 2006. Available online: http://www.theglobeandmail.com/servlet/story/RTGAM.20061018.gtcavoukianlive19/BNStory/Technology/

NEW REGULATIONS UNDER LA FOIP ACT – CONT'D

(a) subsections 171(5) and (6) and sections 201 and 202 of The Cities Act;
(b) section 38 of The Mental Health Services Act;
(c) subsections 201(5) and (6) and sections 231 and 232 of The Municipalities Act;
(d) subsections 196(5) and (6) and sections 205.2 and 205.22 of The Northern Municipalities Act.

The effect of this new regulation is to make the identified provisions paramount to LA FOIP. In other words, in the event there is a clear conflict between LA FOIP and one of these provisions such that to comply with one would violate the other, then the usual rule that LA FOIP is paramount would not apply and the specific provisions would prevail.

What do those provisions relate to? The provisions in *The Cities Act* relate to information that needs to be provided to an assessor for property taxation purposes and a ruling by a board of revision, the appeal board, or the Court of Appeal that certain information is to be classified as "confidential".

The provision in *The Mental Health Services Act* relates to a declaration that records maintained by a facility are the property of the facility and can only be disclosed in accordance with the elements of this provision.

Section 201 of *The Municipalities Act* relates to information or documents that relate to the value of a property. Section 231 permits assessment information to be classified as confidential. Section 232 parallels the regulation described above in relation to *The Cities Act*.

Section 196(5) and (6) of *The Northern Municipalities Act* relate to assessment information. Sections 205.2 and 205.22 relate to assessment information and parallel the above regulations affecting *The Municipalities Act* and *The Cities Act*.

OIPC SUBMISSION TO WORKERS COMPENSATION BOARD (WCB) REVIEW COMMITTEE

On October 24, 2006, the OIPC made a presentation to the WCB Review Committee. This included six recommendations for change in *The Workers' Compensation Act, 1979* and the policies of the WCB. Those recommendations include the following:

- Appoint a full-time access and privacy co-ordinator/officer with direct access to the Board similar to the Fair Practices Officer.
- Ensure applicants can utilize their access to information rights guaranteed by FOIP at any time prior to the initiation of a review.

OIPC SUBMISSION TO WORKERS COMPENSATION BOARD (WCB) REVIEW COMMITTEE – CONT'D

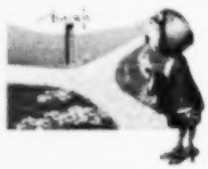
- Limit disclosure of employee personal information and personal health information to that information necessary and relevant for purposes of the particular compensation claim.
- Reconsider the Workers' Compensation Board's exemption from Parts II, IV and V of *The Health Information Protection Act*.

Our 15 page submission and the balance of our recommendations can be found at www.oipc.sk.ca under the tab, "What's New".

SASKATOON HEALTH REGION (ACCESS & PRIVACY WEB PAGE)

Kudos to **Jayden Stephens, Bobbylynn Nowakowski** and their team in the Saskatoon Health Region (SHR) Privacy and Access Unit for the development of the SHR external website (www.saskatoonhealthregion.ca/about_us/privacy_access.htm). The SHR external website now has a clear and easy to access reference to a privacy page and an access to information page. It is an excellent idea to include this kind of information on a trustee website. This is much better than providing the visitor to a trustee website with no information or even links to a page that explains (1) rights under LA FOIP (if a regional health authority) and HIPA (2) the process to obtain access to general information and also to personal health information and (3) the right to appeal to the OIPC if the individual is dissatisfied with the response from the trustee.

IS IT ACCESS OR IS IT A DISCLOSURE?



We encounter some confusion among public bodies over the difference between access and disclosure. "Access" in the privacy world typically refers only to the individual, sometimes known as the data-subject, attempting to get their hands on the information about them held by a public body or trustee. In some circumstances, it may be a surrogate, acting on behalf of the individual, seeking access. This should not be confused with the situation where a third party, either with or without the individual's consent, seeks some or all of the individual's information from the public body or trustee; this would be a "disclosure". Access is a right that all of us enjoy and unless there is a prescribed reason in the statute as to why access can be denied, is mandatory. Most disclosures are discretionary. In other words, it is for the public body or trustee to consider the discretionary power and then to decide whether, in the circumstances, disclosure will or will not be made.

IS IT ACCESS OR IS IT A DISCLOSURE? – CONT'D

A best practice would be to ensure that in any brochures, websites or other information for the public, "access" is used only in the context of the individual getting their own information.

The difference between access and disclosure is important for another reason under HIPA. When individuals exercise their right to seek access to their personal health information, they are entitled to their entire file regardless of their motivation or reason for seeking their file. On the other hand, when an insurance company, lawyer, or relative (or any other third party) requests records or information and produces a consent signed by the individual, this would be a "disclosure". Unlike "access", the general duties of a trustee under HIPA will apply. It becomes important for the trustee to understand why the information is requested.

Imagine that your doctor receives a request from an insurer dealing with your claim for compensation arising from a leg fracture. The fracture occurred when you fell on ice on private property. Imagine that the insurance company requests from your doctor all of your health record. The request may be accompanied by a general consent form signed by you that is not limited in any way. That would capture everything from a wart removal more than 15 years ago to a consultation to deal with anxiety from a marital spat or a workplace problem. Such a request from the insurer is a request for disclosure, not an access request under Part V of HIPA. As a trustee under HIPA, the doctor's office should consider phoning the patient to clarify the purpose of the request. Once the purpose of the request is clarified, the doctor should only disclose the part of the patient's health record that is determined to be relevant to the injury in question. Otherwise, the trustee may be disclosing some personal health information to a non-trustee that the recipient would have no legitimate 'need to know'.

FUTURE EVENTS

November 8, 2006 – SK OIPC Brown Bag Luncheon Workshop (12:10 p.m. – 12:50 p.m.), Topic: "How much is too much? Simplifying Fees and Fee estimates", 503-1801 Hamilton Street, Regina (call (306) 787-8350 for details or to register)

November 13, 2006 – *Electronic Health Information and Privacy Conference*, Ottawa, Ontario (visit http://www.ocri.ca/ehip for details)

November 27-28, 2006 – *3rd Annual Electronic Health Records and Information Systems*, Toronto, Ontario (visit www.insightinfo.com)

December 6, 2006 – SK OIPC Brown Bag Luncheon Workshop (12:10 p.m. – 12:50 p.m.), Topic: "Severing made easy or at least a lot easier!", 503-1801 Hamilton Street, Regina (call (306) 787-8350 for details or to register)

FUTURE EVENTS – CONT'D

January 10, 2007 – SK OIPC Brown Bag Luncheon Workshop (12:10 p.m. – 12:50 p.m.), Topic: "A FOIP Love Triangle! The Public Body, The Applicant and the Third Party (FOIP Part V)", 503-1801 Hamilton Street, Regina (call (306) 787-8350 for details or to register)

January 29-30, 2007 – Health Information Privacy and Security, Toronto, Ontario (visit http://www.insightinfo.com/conferences/upcoming.cfm)

February 21, 2007 – *Assessing Current Privacy Issues*, Ottawa, Ontario (visit www.rileyis.com/seminars)

February 22-23, 2007 – *Privacy Compliance – Practical Solutions for Meeting your Obligations* – Calgary, Alberta (visit www.CanadianInstitute.com for details)

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